

§ 488.303

42 CFR Ch. IV (10-1-03 Edition)

Immediate family means husband or wife; natural or adoptive parent, child or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild.

Immediate jeopardy means a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

Neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

Noncompliance means any deficiency that causes a facility to not be in substantial compliance.

Nurse aide means an individual, as defined in § 483.75(e)(1) of this chapter.

Nursing facility (NF) means a Medicaid nursing facility.

Partial extended survey means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during an abbreviated standard survey.

Skilled nursing facility (SNF) means a Medicare nursing facility.

Standard survey means a periodic, resident-centered inspection which gathers information about the quality of service furnished in a facility to determine compliance with the requirements for participation.

Substandard quality of care means one or more deficiencies related to participation requirements under § 483.13, Resident behavior and facility practices, § 483.15, Quality of life, or § 483.25, Quality of care of this chapter, which constitute either immediate jeopardy to resident health or safety; a pattern of or widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm, but less than immediate jeopardy, with no actual harm.

Substantial compliance means a level of compliance with the requirements of participation such that any identified

deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

Validation survey means a survey conducted by the Secretary within 2 months following a standard survey, abbreviated standard survey, partial extended survey, or extended survey for the purpose of monitoring State survey agency performance.

EFFECTIVE DATE NOTE: At 68 FR 55539, Sept. 26, 2003, § 488.301 was amended by adding a definition for "Paid feeding assistant," effective Oct. 27, 2003. For the convenience of the user, the added text is set forth as follows:

§ 488.301 Definitions.

As used in this subpart—

* * * * *

Paid feeding assistant means an individual who meets the requirements specified in § 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who is used under an arrangement with another agency or organization.

* * * * *

§ 488.303 State plan requirement.

(a) A State plan must provide that the requirements of this subpart and subpart F of this part are met, to the extent that those requirements apply to the Medicaid program.

(b) A State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to Medicaid residents. For purposes of section 1903(a)(7) of the Social Security Act, proper expenses incurred by a State in carrying out such a program are considered to be expenses necessary for the proper and efficient administration of the State plan.

(c) A State must conduct periodic educational programs for the staff and residents (and their representatives) of NFs in order to present current regulations, procedures, and policies under this subpart and subpart F of this part.

(d) Required remedies for a non-State operated NF. A State must establish, in addition to termination of the provider agreement, the following remedies or an approved alternative to the

following remedies for imposition against a non-State operated NF:

- (1) Temporary management.
- (2) Denial of payment for new admissions.
- (3) Civil money penalties.
- (4) Transfer of residents.
- (5) Closure of the facility and transfer of residents.
- (6) State monitoring.

(e) Optional remedies for a non-State operated NF. A State may establish the following remedies for imposition against a non-State operated NF:

- (1) Directed plan of correction.
- (2) Directed in-service training.
- (3) Alternative or additional State remedies.

(f) Alternative or additional State remedies. If a State uses remedies that are in addition to those specified in paragraph (d) or (e) of this section, or alternative to those specified in paragraph (d) of this section (other than termination of participation), it must—

- (1) Specify those remedies in the State plan; and
- (2) Demonstrate to CMS's satisfaction that those alternative remedies are as effective in deterring noncompliance and correcting deficiencies as the remedies listed in paragraphs (d) and (e) of this section.

[59 FR 56238, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]

§ 488.305 Standard surveys.

(a) For each SNF and NF, the State survey agency must conduct standard surveys that include all of the following:

- (1) A case-mix stratified sample of residents;
- (2) A survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment;

(3) An audit of written plans of care and residents' assessments to determine the accuracy of such assessments and the adequacy of such plans of care; and

(4) A review of compliance with residents' rights requirements set forth in sections 1819(c) and 1919(c) of the Act.

(b) The State survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that a facility's deficiencies exist.

§ 488.307 Unannounced surveys.

(a) *Basic rule.* All standard surveys must be unannounced.

(b) *Review of survey agency's scheduling and surveying procedures.* (1) CMS reviews on an annual basis each State survey agency's scheduling and surveying procedures and practices to ensure that survey agencies avoid giving notice of a survey through the scheduling procedures and the conduct of the surveys.

(2) CMS takes corrective action in accordance with the nature and complexity of the problem when survey agencies are found to have notified a SNF or NF through their scheduling or procedural policies. Sanctions for inadequate survey performance are in accordance with § 488.320.

(c) *Civil money penalties.* An individual who notifies a SNF or NF, or causes a SNF or NF to be notified, of the time or date on which a standard survey is scheduled to be conducted is subject to a Federal civil money penalty not to exceed \$2,000.

§ 488.308 Survey frequency.

(a) *Basic period.* The survey agency must conduct a standard survey of each SNF and NF not later than 15 months after the last day of the previous standard survey.

(b) *Statewide average interval.* (1) The statewide average interval between standard surveys must be 12 months or less, computed in accordance with paragraph (d) of this section.

(2) CMS takes corrective action in accordance with the nature of the State survey agency's failure to ensure that the 12-month statewide average interval requirement is met. CMS's corrective action is in accordance with § 488.320.

(c) *Other surveys.* The survey agency may conduct a survey as frequently as necessary to—

- (1) Determine whether a facility complies with the participation requirements; and